

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MARJORIE FERRELL, et al.,)	Civil Action No. C-1-01-447
)	
Plaintiffs,)	Judge Sandra S. Beckwith
)	Magistrate Judge Timothy S. Hogan
v.)	
)	
WYETH-AYERST LABORATORIES,)	
INC., et al.,)	
)	
Defendants.)	
)	

PLAINTIFFS' MOTION FOR FINAL APPROVAL OF PROPOSED SETTLEMENT

Pursuant to Rule 23(e), Fed. R. Civ. P., Plaintiffs United Food & Commercial Workers Midwest Health Benefits Fund, and Twin Cities Bakery Workers Health & Welfare Fund, Marjorie Ferrell, Mary D. Duda and Mary Seaworth (collectively "Plaintiffs") hereby move for final approval of the proposed settlement with Defendants Wyeth Pharmaceuticals (formerly Wyeth-Ayerst Laboratories, Inc.) and Wyeth (formerly American Home Products Corporation) (collectively "Defendants" or "Wyeth"). In support thereof, Plaintiffs state as follows:

1. On December 29, 2006, after hard-fought litigation and many months of very difficult negotiations, Plaintiffs and "Wyeth" entered a Settlement Agreement [Doc. No. 177 #7], that includes a recovery of \$1,300,000 in cash. The settlement contemplates a *cy pres* distribution of the net settlement proceeds to the National Women's Health Resource Center and the Society for Women's Health Research.

2. The arm's length negotiations that led to the settlement are described in the Declaration of Kenneth A. Wexler in Support of Plaintiffs' Motion for Final Approval (Exhibit

1) and the Declaration of the Honorable Edward Infante in Support of Plaintiffs' Motion for Final Approval of Settlement (Exhibit 2).

2. On January 18, 2007, the Court entered its order [Doc. No. 179]: (1) granting preliminary approval to a proposed settlement; (2) directing notice to the previously certified Class (*see* Doc. No. 118, Feb. 2, 2005); and (3) scheduling a fairness hearing for June 15, 2007.

3. In accordance with the Court's order, notice of the settlement and hearing was provided to the Class in the manner specified. *See* Affidavit of Charlene Young [Doc. No. 181, May 14, 2007]. In response to the notice, approximately 3,449 consumers and 89 third-party payors ("TPPs") have exercised their rights to opt-out of the Class. *Id.* ¶ 14.

4. For the reasons set forth in the accompanying Memorandum in Support of Motion for Final Approval of Proposed Settlement, the Court should grant final approval to the proposed settlement and enter its Final Order and Judgment in the form substantially similar to Exhibit B to the Settlement Agreement [Doc. No. 177 #9].

5. The Court should also approve the *cy pres* distribution of net settlement proceed to the National Women's Health Resource Center and the Society for Women's Health Research. The following affidavits are submitted in support of this proposed distribution:

- a. Affidavit of Elizabeth Battaglino Cahill (Exhibit 3), of the National Women's Health Resource Center; and
- b. Affidavit of Suzanne Stone (Exhibit 4), of the Society for Women's Health Research.

WHEREFORE, Plaintiffs respectfully request that the Court: (i) approve the settlement; (ii) enter the proposed Order and Final Judgment; and (iii) authorize counsel to otherwise finalize

such matters as may be required to effectuate the terms of the settlement.

Dated: June 1, 2007

Respectfully submitted,

By: s/Patrick E. Cafferty
One of Plaintiffs' Counsel

Janet G. Abaray
LOPEZ, HODES, RESTAINO,
MILMAN, SKIKOS & POLOS
312 Walnut Street, Suite 2090
Cincinnati, Ohio 45202
Tel: (513) 852-5600

Joseph E. Conley, Jr.
BUECHEL & CONLEY
25 Crestview Hills Mall Road
Suite 104
Crestview Hills, Kty. 41017
Tel: (859) 578-6600

Co-Liaison Counsel for Plaintiffs

Kenneth A. Wexler
Jennifer F. Connolly
WEXLER TORISEVA
WALLACE LLP
One North LaSalle, Suite 2000
Chicago, Illinois 60602
(312) 346-2222

Stacey L. Mills
Lori A. Johnson
HEINS MILLS & OLSON, P.C.
3550 IDS Center, 80 South Eighth Street
Minneapolis, MN 55402
(612) 338-4605

Marc H. Edelson
HOFFMAN & EDELSON
45 West Court Street
Doylestown, Pennsylvania 18901
(215) 230-8043

Patrick E. Cafferty
CAFFERTY FAUCHER LLP
101 N. Main Street, Suite 450
Ann Arbor, MI 48104
(734) 769-2144

Co-Lead Counsel for Plaintiffs

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CERTIFICATE OF SERVICE

I, Patrick E. Cafferty, hereby certify that a copy of the foregoing *Plaintiffs' Motion for Final Approval of Proposed Settlement* was electronically filed. Those attorneys who are registered with the Electronic Filing System may access these filings through the Court's System, and notice of these filings will be sent to these parties by the operation of the Court's Electronic Filing System.

Dated: June 1, 2007

By: s/Patrick E. Cafferty
CAFFERTY FAUCHER LLP
Patrick E. Cafferty
101 N. Main Street Suite 450
Ann Arbor, Michigan 48104
Tel: 734-769-2144
Fax: 734-769-2144
pcafferty@caffertyfaucher.com